MONTANA LEGISLATIVE HISTORY

Chapter 398 19 93

Bill H 272 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 03	✓ C	Hearing Date(s)	Mar 12	✓ C
		C			C
		C			C
		C			C
Date Out	Feb 04	✓ C		Mar 18	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/13	2ND READING DO PASS AS AMENDED MOTION FAILED	40	57

HB 269 INTRODUCED BY LARSON, ET AL.

REVISE LAW CONCERNING CHANGE IN HOLDER OF GAMBLING OPERATOR'S LICENSE FOR PREMISES WITH VIDEO GAMBLING MACHINE

1/19	INTRODUCED		
1/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/02	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	87	8
2/10	3RD READING PASSED	88	7
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO TAXATION		
3/04	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	46	0
3/08	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR CHAPTER NUMBER 210 EFFECTIVE DATE: 07/01/93		

HB 270 INTRODUCED BY GRADY, ET AL.

CREATE SPECIAL LICENSE PLATES FOR FRATERNAL ORGANIZATIONS

1/19	INTRODUCED
1/20	REFERRED TO HIGHWAYS & TRANSPORTATION
1/20	FIRST READING
1/20	FISCAL NOTE REQUESTED
1/25	FISCAL NOTE RECEIVED
1/28	FISCAL NOTE PRINTED
1/29	HEARING
2/03	TABLED IN COMMITTEE

HB 271 INTRODUCED BY LARSON, ET AL.

RECONCILE MONEY IN ALL VIDEO GAMBLING MACHINES TOGETHER

1/19	INTRODUCED
1/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
1/20	FIRST READING
2/08	HEARING
2/08	TABLED IN COMMITTEE

HB 272 INTRODUCED BY J. RICE

REVISE AND CLARIFY GAMBLING LAWS

BY REQUEST OF DEPARTMENT OF JUSTICE

1/19	INTRODUCED
1/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT

1/20	FIRST READING		
1/21	REREFERRED TO JUDICIARY		
2/03	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED AS AMENDED	96	2
2/10	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/17	HEARING		
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED	45	2
3/20	3RD READING CONCURRED	42	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	95	0
4/02	3RD READING AMENDMENTS CONCURRED	93	6
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 398		
	EFFECTIVE DATE: 10/01/93		

HB 273 INTRODUCED BY DOLEZAL, ET AL.

PROHIBIT INSURER DIRECTING CAR OWNER TO SPECIFIED PLACE FOR GLASS REPAIRS

1/19	INTRODUCED		
1/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/20	FIRST READING		
2/04	FISCAL NOTE REQUESTED		
2/09	HEARING		
2/11	FISCAL NOTE RECEIVED		
2/11	FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED AS AMENDED	100	0
2/18	REVISED FISCAL NOTE REQUESTED		
2/22	REVISED FISCAL NOTE RECEIVED		
2/23	REVISED FISCAL NOTE PRINTED		
2/23	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO BUSINESS & INDUSTRY		
3/11	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	44	3
3/19	3RD READING CONCURRED	46	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS NOT CONCURRED	97	1
4/02	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/15	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	1
4/16	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	2
	SENATE		
4/05	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		

HOUSE BILL NO. 272

INTRODUCED BY J. RICE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
JANUARY 21, 1993	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 8, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 9, 1993	ENGROSSING REPORT.
FEBRUARY 10, 1993	THIRD READING, PASSED. AYES, 96; NOES, 2.
FEBRUARY 11, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 19, 1993	SECOND READING, CONCURRED IN.
MARCH 20, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 2, 1993

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 272

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, AND 23-5-631, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-5-110, MCA, is amended to read:

"23-5-110. Public policy of state concerning gambling. (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 6 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 6 8 of this chapter is a privilege revocable only for good cause. A holder does not acquire a vested right in the license or permit issued or

other department approval granted. A license or permit issued under parts 1 through 6 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 6 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

Section 2. Section 23-5-111, MCA, is amended to read:

"**23-5-111. Construction and application.** ~~(1)~~ In view of Article III, section 9, of the Montana constitution, ~~chapter 642, laws of 1989,~~ parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by ~~chapter 642, laws of 1989~~ those parts.

~~(2) This chapter applies only to public gambling activities within the state of Montana.~~"

Section 3. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts

1 through 6 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No more~~ More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or

system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

~~(14)~~(15) "Gross proceeds" means gross revenue received less prizes paid out.

~~(15)~~(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used

under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

~~(16)~~(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, ~~includes~~ including craps, hazard, or chuck-a-luck, but does not ~~include--an-activity-in-which-a-participant-rolls-one-or-more-dice-for-a-chance-to-obtain--a--drink--or--music~~ including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards,

but not including those activities authorized in chapter 4 of this title and parts 2, and 5, and 8 of this chapter.

~~(17)~~(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(18)~~(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(19)~~(20) "License" means ~~an--operator's,--dealer's,~~ a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment, or ~~manufacturer-distributor's---license~~ manufacturer-distributor issued to a person by the department.

~~(20)~~(21) "Licensee" means a person who has received a license from the department.

~~(21)~~(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(22)~~(23) "Lottery" ~~or--"gift-enterprise"~~ means a scheme,

by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. ~~However,~~ ~~"gift enterprise"~~ The term does not mean:

~~(a)~~ lotteries authorized under chapter 7~~;~~ ~~or~~

~~(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos~~ of this title.

~~(23)~~(24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

~~(24)~~(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(25)~~(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling

enterprise authorized under parts 1 through 6 8 of this chapter.

~~(26)~~(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 8 of this chapter.

~~(27)~~(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(28)~~(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(29)~~(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

~~(30)~~(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited

to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(31)~~(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(32)~~(33) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(33)~~(34) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill

of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(34)~~(35) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 4. Section 23-5-113, MCA, is amended to read:

"23-5-113. Department as criminal justice agency -- seized property. (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 6 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 6 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."

Section 5. Section 23-5-115, MCA, is amended to read:

"23-5-115. **Powers and duties of department -- licensing.** (1) The department shall administer the provisions of parts 1 through 6 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 6 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 8 of this chapter."

Section 6. Section 23-5-117, MCA, is amended to read:

"23-5-117. **Premises approval.** (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) ~~through--(4)~~ and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

Section 7. Section 23-5-118, MCA, is amended to read:

"**23-5-118. Transfer of ownership interest. A ~~licensed~~ operator** (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in ~~his~~ premises the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation."

Section 8. Section 23-5-123, MCA, is amended to read:

"**23-5-123. Disposal of money confiscated by reason of violation of gambling laws.** All fines, penalties,

forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 6 8 of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred."

Section 9. Section 23-5-136, MCA, is amended to read:

"**23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 8 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the

violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 10. Section 23-5-157, MCA, is amended to read:

"23-5-157. Gambling on cash basis. (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be made in cash. A check or credit card may be used to obtain cash to participate in a gambling activity. A participant shall present the money cash needed to play the game as the game is being played. A check, credit card, note, ~~I-O-U~~ IOU, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. ~~The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.~~

(2) A person who violates this section is guilty of a

misdemeanor and must be punished in accordance with 23-5-161."

Section 11. Section 23-5-161, MCA, is amended to read:

"**23-5-161. Criminal liabilities -- misdemeanor.** A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment of which is for a misdemeanor, ~~must~~ shall upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person ~~must~~ shall be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person ~~must~~ shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person ~~must~~ shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

Section 12. Section 23-5-162, MCA, is amended to read:

"**23-5-162. Criminal liabilities -- felony.** (1) A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 6 8 of this chapter and may not issue the person another license or permit under parts 1 through 6 8 of this chapter."

Section 13. Section 23-5-171, MCA, is amended to read:

"**23-5-171. Authority of local governments to regulate gambling.** (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 6 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not restrict the number of licenses that the department may

issue."

Section 14. Section 23-5-172, MCA, is amended to read:

"**23-5-172. Prosecution.** The county attorney of the county in which a violation of a provision of parts 1 through 6 8 of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state."

Section 15. Section 23-5-309, MCA, is amended to read:

"**23-5-309. Requirements for conducting card games.** (1) Except as provided in 23-5-310 and 23-5-317, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) A live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer."

Section 16. Section 23-5-610, MCA, is amended to read:

"**23-5-610. (Temporary) Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video

gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) and the surtax imposed by 23-5-646 to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine

is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-610. (Effective on receipt of taxes for calendar quarter ending June 30, 1993) Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order and ~~if~~ a law enforcement agency investigated the theft and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such a form as the department may require. The records must at all times during the business hours of the licensee be

subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to ~~him~~ the operator, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 17. Section 23-5-631, MCA, is amended to read:

"**23-5-631. Examination and approval of new video gambling machines and associated equipment -- fee.** (1) The

department shall examine and may approve a new video gambling machine and associated equipment ~~which~~ that are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer-distributor is licensed as required in 23-5-625.

(3) All video gambling machines approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer-distributor seeking the examination and approval of a new video gambling machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public. A manufacturer-distributor may not supply a video gambling machine or associated equipment to another licensed manufacturer-distributor or a licensed operator unless the machine or equipment has been approved by the department."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 3, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 307, HB 272
Executive Action:	HB 272, HB 307, HB 236, HB 267 HB 258, HB 121, HB 323, SB 29

which is coin operated, but it doesn't make it very clear that it has to be a game of skill. **REP. RICE** asked if the committee needs to coordinate the bills or keep them separate. **Ms. Jessup** said that, even though they are the same type of bill, they use different language.

Closing by Sponsor:

REP. DEBRUYCKER said the bill is self-explanatory and supports the Department of Justice's amendments.

HEARING ON HB 272

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that HB 272 is a gambling bill presented upon request of the Attorney General's office that offers technical changes to the Gambling Control Act.

Proponents' Testimony:

Janet Jessup, Administrator of Damage Control Division, Department of Justice, presented written testimony. **EXHIBIT 2**

Larry Akey, Montana Coin Machine Operators Association (MCMOA), said that, although MCMOA supports this bill, he wanted to call the committee's attention to page 15, section 7. This bill gives the department the authority to approve transfers in instances of substantial amounts of financing.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 272

Motion/Vote: **REP. TOOLE MOVED HB 272 DO PASS.** Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 307

Motion: **REP. BROWN** moved to approve the amendments provided by **Janet Jessup,** where on page 13, line 18, between "October 1 and

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-3-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
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CS-09

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 272 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

280855SC.Hpf

EXHIBIT 2
DATE 2/3-93
HB 272 J.L.

STATE OF MONTANA

DEPARTMENT OF JUSTICE

GAMBLING CONTROL DIVISION

Joseph P. Mazurek
Attorney General

2687 Airport Road
PO Box 201424
Helena, MT 59620-1424

Department of Justice Technical Amendments to Gambling Laws

Sections 1, 2, 4, 5, 8, 9, 11, 12, 13 and 14 (23-5-110, 23-5-111, 23-5-113, 23-5-115, 23-5-123, 23-5-136, 23-5-161, 23-5-162, 23-5-171, 23-5-172): correct references to the existing law which has eight chapters, not six as indicated in these sections.

Section 3 (23-5-112): also corrects the number of parts in the chapter, In addition, Subsection 14 places the definition of gift enterprise, which was discussed under the subsection describing public gambling, in a category of its own so that it can be found more easily without changing the original definition. Subsection 17 is corrected to include all references to dice games in existing law. Subsection 20 lists all the types of gambling-related licenses, reflecting current practice.

Section 6 (23-5-117): corrects an internal reference to the number of subsections.

Section 7 (23-5-118): expands on the provision for transfer of ownership interest by stating what this section is intended to regulate: i.e., licensed gambling operations. Clarifies that transfers must be approved by the department unless the transfer involves a security interest of less than 5% of the interest in a publicly traded corporation.

Section 10 (23-5-157): clarifies language to make it clear that "cash" includes checks or credit cards that may be used to obtain cash to participate in a gambling activity.

Section 15 (23-5-309): corrects internal references to the conduct of card games to include an existing section that refers to these games.

Section 16 (23-5-610): clarifies language on the deduction an operator may take against gross income for amounts stolen from machines by defining theft as the result of unauthorized entry and physical removal of money; also adds that repayments of stolen funds made through court restitution cannot be deducted from gross income, similar to amounts repaid to the operator by insurance claims.

Section 17 (23-5-631): Subsection 6 is amended to clarify that all video gaming machines supplied to licensed operators or manufacturers must have been approved by the department as being in compliance with state law; this is intended to make it clear that the secondary market for used machines must be in full compliance with state regulations in the same way as new machines.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 272

DATE Feb 3, 1993 SPONSOR(S) Jim Rice

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Janet Jessup	Dept of Justice	✓	
Rob Smith	DOJ	✓	
DENNIS M. TAYLOR	JUSTICE	✓	
Lanie Kostnik	Christian Coalition of Mt	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG,** on March 17, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: Rep. Karyl Winslow (R)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 406, SB 323, SB 179, SB 264, SB 344
Executive Action: SB 37

HEARING ON SB 406

Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 23, Helena, said that SB 406 expands the temporary restraining order laws and the criminal laws that protect persons against domestic abuse.

She said that Section 1 extends restraining orders to a broader

(hb030701.ajm).

Proponents' Testimony:

Bill Chiesa, General Manager, Metro Park, Billings, told the Committee he represented the various fairs and four carnivals that had business in Montana. He said in the 1989 session when the Comprehensive Gambling Bill was passed, games of skill were left out. In the 1991 session, a list of allowable games was legislated, and any game not on the list was illegal. HB 307 would allow the Attorney General to annually consider the list of games that could be played in Montana. If the definition of "games of skill or skill and chance" are added to legislation, the Attorney General would be able to add these games to the list. Then these games of skill would be legal.

Janet Jessup, Department of Justice, Gambling Control Division, said she did not believe it would take a great deal of time to analyze the list of games and the venture would not be costly. She said it would simplify and clarify the gaming situation for county attorneys.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Debruycker closed. Senator Yellowtail was assigned to carry HB 307 on the Senate Floor.

HEARING ON HB 272

Opening Statement by Sponsor:

Representative Jim Rice, House District 43, told the Committee HB 272 presented technical amendments to the Gambling Control Act.

Proponents' Testimony:

Janet Jessup, Administrator, Gambling Control Division, Department of Justice, told the Committee HB 272 was a companion bill to HB 411. Ms. Jessup said the provisions put into the Bill reflect incorrect references that were discovered during the administrative process at the Gambling Control Division. HB 272

was drafted at the request of the Department of Justice. The amendments were discussed before the Gaming Advisory Council and their comments made were incorporated in the Bill. Ms. Jessup handed descriptions of amendments to gambling laws (Exhibits #1a and #1b). She said there was little substantive matter in HB 272. She said there was an amendment (HB027201.agp) that corrected the references between HB 272 and HB 411.

Larry Akey, Montana Coin Operators Association, said provisions of HB 272 clarified the gaming statutes.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Blaylock asked Janet Jessup if the only area of substantive matter was subsection 7. Ms. Jessup answered this section was only a clarification of current law.

Closing by Sponsor:

Representative Rice closed on HB 272.

HEARING ON 411

Opening Statement by Sponsor:

Representative Royal Johnson, House District 88, explained the Justice Department and people in the gambling industry had worked to draft HB 411. He explained the Bill changed the current law and would limit the personal activities of gaming route operators. The new language in HB 411 provides that in order to promote a game of chance, the game must be legal in Montana. Section 3 of the Bill provides the Department of Justice must have clear and convincing evidence before there can be an action taken against a person. Section 5 and section 20 provide that an operator who reconditions gambling devices can import and recondition devices not legal in Montana, but cannot sell them in Montana. The importation and sale of non-mechanical illegal gambling devices would stay illegal under HB 411. Section 6 provides for laws on loans and gambling credit, and section 7 provides a serious felony penalty for breaking the laws in section 6. Section 8 clarifies there may be more than one shake-a-day game per day. Sections 11 and 12 limit the total amount of money paid out to one person. Sections 14, 15, 17, and 18, provide for separate licenses for manufacturers, distributors, and route operators. Under these provisions, a person in the gambling industry could still take part in all of these

EXECUTIVE ACTION ON HB 272

Motion:

Senator Halligan moved HB 272 BE CONCURRED IN. He withdrew his motion.

Discussion:

Valencia Lane explained the amendments (HB027201.agp).

Motion/Vote:

Senator Halligan moved HB 272 BE AMENDED (HB027201.agp). The motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

Motion\Vote:

Senator Halligan moved HB 272 BE CONCURRED IN AS AMENDED. The Motion CARRIED UNANIMOUSLY with Senator Blaylock and Senator Harp not voting.

EXECUTIVE ACTION ON HB 258

Discussion:

Valencia Lane explained Representative Howard Toole had suggested an amendment (HB025801.AVL).

Senator Yellowtail recognized Brent Cromley to explain the amendment.

Brent Cromley, practicing attorney, Billings, told the Committee he had represented a client in a wrongful termination suit. The law said that before litigation commenced, one side could make an offer to arbitrate. If the offer is successful, the client would be able to recover the attorney's fees. He said in the case he was involved in, his client made the offer to arbitrate, but the case went to litigation. The Montana Supreme Court originally decided in favor of Mr. Cromley's client to recover attorney's fees, but the Court said there was no written agreement to arbitrate. There was a petition for a rehearing which was denied. He said this decision was a disservice to all involved because it moved away from the decision to arbitrate rather than to sue. He said the amendment did not change the statute, but made clear that there was an incentive to go to arbitration.

Senator Towe asked Valencia Lane to explain what the amendment would do. Ms. Lane explained the language in the new Section 3 was the same as the first set of amendments. She said this did

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3/17/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

March 17, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 272 (first reading copy -- blue), respectfully report that House Bill No. 272 be amended as follows and as so amended be concurred in.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 26, line 9.
Following: "."
Insert: "[A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.]"

2. Page 27, line 4.
Following: line 3
Insert: "
NEW SECTION. Section 19. Coordination instruction. If House Bill No. 411 is passed and approved, then the unbracketed amendment in [section 17(6) of this act], amending 23-5-631, is void and the bracketed language is effective. If House Bill No. 411 is not passed and approved, then the bracketed language is void."

-END-

m- Amd. Coord.
nw Sec. of Senate

Yellowtail
Senator Carrying Bill

601240SC.Sma

STATE OF MONTANA

DEPARTMENT OF JUSTICE

GAMBLING CONTROL DIVISION

Joseph P. Mazurek
Attorney General

2687 Airport Road
PO Box 201424
Helena, MT 59620-1424

Department of Justice Substantive Amendments to Gambling Laws

The substantive changes as proposed by the Department and the Gambling Control Division, and as discussed by the Gaming Advisory Council, are summarized below. The type or category of the amendment is footnoted.

Section 1: Provides uniform compensation for Gaming Advisory Council Members (2-15-2021) This would pay Council members $25 per day for Council activities. The Division had been paying compensation until the Legislative Auditor pointed out that the law creating the Advisory Council did not provide for payment, which conflicts with provisions in Title 2. The $25 amount is typical for such activities.***

Section 2: Clarifies definitions to reflect actual activities in the gambling industry (example: defines a "route operator"). Also limits promotional activities to legal gambling activities only(23-5-112). The new language limits the use of promotional games of chance to those simulating a legal gambling enterprise. As such, no consideration should be paid to play. (See also Sections 10, 11 and 12.) ***

Section 3: Clarifies that the Department of Justice must have clear and convincing evidence before issuing a temporary cease and desist order (23-5-136). By including the words"clear and convincing evidence", the law would reflect the current practice and standards in use by the Division.**

New Section 4: Sets standards for the types of evidence that may be admitted during an administrative proceeding. This could allow the department or an applicant to admit into the record heresay evidence that had been determined to possess sufficient quaranties of trustworthiness.**

Sections 5 and 20: Clarifies the law with regard to the importation of illegal gambling devices for manufacturing purposes (23-5-152 and 631). Current law does allows a manufacturer to import some devices and the new language identifies why a manufacturer would want to import illegal devices; i.e., to be reconditioned or repaired in part or modified for eventual export out of the state.*

Section 6: Provides a felony penalty to the credit gambling law (23-5-157). This new language provides that the third or subsequent offense of credit gambling would be a felony.**

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1a
DATE 3/17/93
BILL NO. HB ~~35~~ 272

Tel. (406) 442-7325

Page Two: Substantive Amendments

Sections 7 and 22: Provides penalty for minors violating the underage gambling law (23-5-158, 41-5-203). Currently there are no penalties for these violations; these revisions would establish a civil penalty not to exceed $50 or as entered in proceedings held in youth court.**

Section 8: Clarifies shake-a-day provisions (23-5-160). Mostly clarification, making the game more like the one played in the past. The language would allow more that one game per day.*

Section 9: Clarifies provisions regarding "grandfathered" establishments (23-5-306) in accordance with the legislative intent of the 1989 law. States that only natural persons (not businesses) are allowed to be grandfathered for video gambling machines on off-premises sites (non-liquor, convenience stores) and that this person must have continuously owned the establishment since January 15, 1989.*

Sections 10, 11, and 12: Clarifies provisions on live card game tournaments (23-5-312 and 317). Clearly states that the legislative intent in allowing theses tournaments was that such events be held only on occasion. The revisions would require that the operators use card games rules and would not allow them to roll-forward several games, resulting in a prize exceeding the current standard of $300. In addition, it limits promotional card game prizes to $300 and live bingo or keno promotional games to $100 (23-5-312, 23-5-412). This would restrict the amount of cash prizes that can be given for promotional games of chance (where no consideration is paid to play). Section 12 also redefines bingo to permit a game to consist of more than one arrangement of numbers (23-5-412). Allows multiple games on one set of bingo balls, but no award can exceed $100 as in current law. *, ***

Section 13: Deletes reference to sports pools on sporting events involving animals; this subject is being addressed in HB433, with an appropriate coordinating clause.

Sections 14, 15, 17 and 18: Creates separate licenses for manufacturers, distributors, and route operators (23-5-112, 23-5-625, 23-5-631). Separate licenses would be required instead of one license which covers all three functions since these are very different activities. It would not prevent one entity from having multiple licenses and would better define the activities allowed. Furthermore, the Department could waive fees if more than one license was requested. ***

New Section 16: Defines allowable route operator activities with regards to operators (23-5-625). Define the normal business relationship between a route operator and the premises operator (i.e., paying machine permit fees and taxes, maintenance and repair, promotion, change and prize payouts).***

New Section 19: Identifies circumstances when an operator's license is not needed for the sale of video gambling machines. For example, lienholders acquiring title through foreclosure (i.e., banks) can sell machines to licensed entities.***

Section 21: Clarifies definition of a cakewalk amusement game and the skill chutes and bulldozer amusement games (23-6-104). These changes will help County Attorneys who are most likely to be called on to interpret the law in this area.*

* Clarification of language or intent
** New or changed criminal penalties, or changed legal procedures
*** Procedural changes

STATE OF MONTANA

DEPARTMENT OF JUSTICE

GAMBLING CONTROL DIVISION

Joseph P. Mazurek
Attorney General

2687 Airport Road
PO Box 201424
Helena, MT 59620-1424

Department of Justice Technical Amendments to Gambling Laws

Sections 1, 2, 4, 5, 8, 9, 11, 12, 13 and 14 (23-5-110, 23-5-111, 23-5-113, 23-5-115, 23-5-123, 23-5-136, 23-5-161, 23-5-162, 23-5-171, 23-5-172): correct references to the existing law which has eight chapters, not six as indicated in these sections.

Section 3 (23-5-112): also corrects the number of parts in the chapter, In addition, Subsection 14 places the definition of gift enterprise, which was discussed under the subsection describing public gambling, in a category of its own so that it can be found more easily without changing the original definition. Subsection 17 is corrected to include all references to dice games in existing law. Subsection 20 lists all the types of gambling-related licenses, reflecting current practice.

Section 6 (23-5-117): corrects an internal reference to the number of subsections.

Section 7 (23-5-118): expands on the provision for transfer of ownership interest by stating what this section is intended to regulate: i.e., licensed gambling operations. Clarifies that transfers must be approved by the department unless the transfer involves a security interest of less than 5% of the interest in a publicly traded corporation.

Section 10 (23-5-157): clarifies language to make it clear that "cash" includes checks or credit cards that may be used to obtain cash to participate in a gambling activity.

Section 15 (23-5-309): corrects internal references to the conduct of card games to include an existing section that refers to these games.

Section 16 (23-5-610): clarifies language on the deduction an operator may take against gross income for amounts stolen from machines by defining theft as the result of unauthorized entry and physical removal of money; also adds that repayments of stolen funds made through court restitution cannot be deducted from gross income, similar to amounts repaid to the operator by insurance claims.

Section 17 (23-5-631): Subsection 6 is amended to clarify that all video gaming machines supplied to licensed operators or manufacturers must have been approved by the department as being in compliance with state law; this is intended to make it clear that the secondary market for used machines must be in full compliance with state regulations in the same way as new machines.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 3/17/93
BILL NO. HB ~~355~~ 273

Tel. (406) 442-7325

HOUSE BILL NO. 272

INTRODUCED BY J. RICE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, ~~AND~~ 23-5-631, AND 23-7-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-5-110, MCA, is amended to read:

"**23-5-110. Public policy of state concerning gambling.** (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 6 8 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 6 8 of this chapter is a privilege revocable only for good cause. A holder does not

acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 6 8 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 6 8 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

Section 2. Section 23-5-111, MCA, is amended to read:

"**23-5-111. Construction and application.** ~~(1)~~ In view of Article III, section 9, of the Montana constitution, ~~chapter 642, laws of 1989,~~ parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by ~~chapter--642,--laws--of 1989~~ those parts.

~~(2)--This---chapter--applies--only--to--public--gambling activities-within-the-state-of-Montana.~~"

Section 3. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 8 of this chapter:

(1) "Applicant" means a person who has applied for a

license or permit issued by the department pursuant to parts 1 through 6 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No more~~ More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the

public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot

machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

~~(14)~~(15) "Gross proceeds" means gross revenue received less prizes paid out.

~~(15)~~(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board,

pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

~~(16)~~(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, ~~includes~~ including craps, hazard, or chuck-a-luck, but does not ~~include an activity in which a participant rolls one or more dice for a chance to obtain a drink or music~~ including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event,

including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, ~~and~~ 5, and 8 of this chapter.

~~(17)~~(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(18)~~(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(19)~~(20) "License" means ~~an operator's, dealer's,~~ a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment, or ~~manufacturer-distributor's license~~ manufacturer-distributor issued to a person by the department.

~~(20)~~(21) "Licensee" means a person who has received a license from the department.

~~(21)~~(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(22)~~(23) "Lottery" ~~or "gift enterprise"~~ means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. ~~However, "gift enterprise"~~ The term does not mean:

~~(a)~~ lotteries authorized under chapter 7~~, or~~

~~(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos~~ of this title.

~~(23)~~(24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

~~(24)~~(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(25)~~(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates

or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 8 of this chapter.

~~(26)~~(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 8 of this chapter.

~~(27)~~(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(28)~~(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(29)~~(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

~~(30)~~(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(31)~~(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(32)~~(33) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(33)~~(34) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the

play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(34)~~(35) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 4. Section 23-5-113, MCA, is amended to read:

"**23-5-113. Department as criminal justice agency -- seized property.** (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 6 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through 6 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under

23-5-123."

Section 5. Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department -- licensing. (1) The department shall administer the provisions of parts 1 through 6 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 6 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 8 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 8 of this chapter."

Section 6. Section 23-5-117, MCA, is amended to read:

"23-5-117. Premises approval. (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) ~~through (4)~~ and (3).

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the

person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

Section 7. Section 23-5-118, MCA, is amended to read:

"**23-5-118. Transfer of ownership interest. ~~A--licensed operator~~** (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in ~~his premises~~ the operation.

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation."

Section 8. Section 23-5-123, MCA, is amended to read:

"**23-5-123. Disposal of money confiscated by reason of**

violation of gambling laws. All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 6 8 of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred."

Section 9. Section 23-5-136, MCA, is amended to read:

"**23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 8 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or

enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through

15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 10. Section 23-5-157, MCA, is amended to read:

"23-5-157. Gambling on cash basis. (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be made in cash. A check or credit card may be used to obtain cash to participate in a gambling activity. A participant shall present the money cash needed to play the game as the game is being played. A check, credit card, note, ~~I-O-U~~ IOU, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. ~~The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.~~

(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with 23-5-161."

Section 11. Section 23-5-161, MCA, is amended to read:

"23-5-161. Criminal liabilities -- misdemeanor. A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment of which is for a misdemeanor, must shall upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person must shall be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person must shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person must shall be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 8 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

Section 12. Section 23-5-162, MCA, is amended to read:

"23-5-162. Criminal liabilities -- felony. (1) A person who purposely or knowingly violates a provision of parts 1 through 6 8 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through 6 8 of this chapter and may not issue the person another license or permit under parts 1 through 6 8 of this chapter."

Section 13. Section 23-5-171, MCA, is amended to read:

"23-5-171. Authority of local governments to regulate gambling. (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 6 8 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not

restrict the number of licenses that the department may issue."

Section 14. Section 23-5-172, MCA, is amended to read:

"23-5-172. Prosecution. The county attorney of the county in which a violation of a provision of parts 1 through 6 8 of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state."

Section 15. Section 23-5-309, MCA, is amended to read:

"23-5-309. Requirements for conducting card games. (1) Except as provided in 23-5-310 and 23-5-317, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) A live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer."

Section 16. Section 23-5-610, MCA, is amended to read:

"23-5-610. (Temporary) Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling

machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) and the surtax imposed by 23-5-646 to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or

treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-610. (Effective on receipt of taxes for calendar quarter ending June 30, 1993) Video gambling machine gross income tax -- records -- distribution -- quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order and ~~if~~ a law enforcement agency investigated the theft and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in ~~such~~ a form as the department may require. The records must

at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to ~~him~~ the operator, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 17. Section 23-5-631, MCA, is amended to read:

"**23-5-631. Examination and approval of new video**

gambling machines and associated equipment -- fee. (1) The department shall examine and may approve a new video gambling machine and associated equipment ~~which~~ that are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer-distributor is licensed as required in 23-5-625.

(3) All video gambling machines approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer-distributor seeking the examination and approval of a new video gambling machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and to

issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public. A manufacturer-distributor may not supply a video gambling machine or associated equipment to another licensed manufacturer-distributor or a licensed operator unless the machine or equipment has been approved by the department. [A MANUFACTURER, DISTRIBUTOR, OR ROUTE OPERATOR MAY NOT SUPPLY A VIDEO GAMBLING MACHINE OR ASSOCIATED EQUIPMENT TO A MANUFACTURER, DISTRIBUTOR, ROUTE OPERATOR, OR OPERATOR UNLESS THE MACHINE OR EQUIPMENT HAS BEEN APPROVED BY THE DEPARTMENT.]"

SECTION 18. SECTION 23-7-302, MCA, IS AMENDED TO READ:

"**23-7-302. Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may be purchased only with cash or a check and may not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers

doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance."

NEW SECTION. **SECTION 19.** COORDINATION INSTRUCTION. IF HOUSE BILL NO. 411 IS PASSED AND APPROVED, THEN THE UNBRACKETED AMENDMENT IN [SECTION 17(6) OF THIS ACT], AMENDING 23-5-631, IS VOID AND THE BRACKETED LANGUAGE IS EFFECTIVE. IF HOUSE BILL NO. 411 IS NOT PASSED AND APPROVED, THEN THE BRACKETED LANGUAGE IS VOID.

-End-